

## REMARKS/ARGUMENTS

### **Claims**

#### 35 USC § 103(a) Rejections

##### Claims 1 – 9, 12 – 19 and 22

The Examiner has rejected Claims 1 – 9, 12 – 19 and 22 under 35 USC § 103(a) as being unpatentable over de Jong *et al.* (US5,588,234) in view of Pannier (US1,376,223).

##### Claims 10 and 20

The Examiner has rejected Claims 10 and 20 under 35 USC § 103(a) as being unpatentable over de Jong *et al.* (US5,588,234) in view of Pannier (US1,376,223) as applied to claims 1 and 20 above, and further in view of Johnson (US5,461,807).

##### Claims 11 and 21

The Examiner has rejected Claims 11 and 21 under 35 USC § 103(a) as being unpatentable over de Jong *et al.* (US5,588,234) in view of Pannier (US1,376,223) as applied to claim 1 above, and further in view of Gessner (EP 0754405).

##### Claims 23 - 27

The Examiner has rejected Claims 23 – 27 under 35 USC § 103(a) as being unpatentable over various combinations of references.

#### Arguments

Applicants have canceled Claims 1 – 11 and 23 – 28. Therefore, the discussion will focus on Claims 12 – 22 and their allowability over the cited references.

Claims 12 and 22 have been amended to more clearly claim the disclosed Tag.

In order to understand the nature of applicant's invention, it is important to appreciate the disadvantages of prior art tags and the manner in which applicant's invention overcomes these disadvantages. Some of these disadvantages are summarized below.

The majority of prior art tags comprise a single penetrating component which is pushed through the ear of an animal into a locking component to hold the tag to the ear. It is normal practice for the penetrating component to pass through the ear from the outer skin and through the inner skin to join with the locking component. The tag may be arranged so that a flag hangs from the locking component from the inside of the ear so that it is less liable to catch on objects which the animal may rub against. This is particularly a concern as the tag causes irritation which the animal often seeks to overcome by rubbing the edge of the tag against an object such as the wire of a fence. This often results in the tag being completely removed from the animal.

Notwithstanding the fact that the flag identifying the animal hangs from the locking component at a less accessible location from the inner surface of the ear, the penetrating component is itself generally accessible to being rubbed off by an animal. This is because it must be constructed in such a way that it leaves an accessible edge which an animal may rub beneath the wires of a fence or feeding rails and hence pull it away from the ear. The top of the locking component is generally in the form of a broad head having an accessible perimeter edge. This is necessary to prevent the penetrating component from being pulled through the ear.

With a single penetrating component and locking component, the flag depending from the locking component may rotate with respect to the ear and in some instances, move to a position where it is not visible making it hard for a farmer to identify the animal concerned.

In order to reduce healing times and reduce the risk of infection, it is desirable to have air freely circulate about the region of the inner surface of the ear which has been damaged. It has been found this reduces the risk of infection and speeds up healing.

Comparing the construction defined by amended claim 12, with the teachings of De Jong we observe that the animal tag disclosed in this citation only has a single penetrating and complementary component compared with the two defined for applicant's invention. It therefore suffers from all the disadvantages identified above including inadequate air circulation and infection.

As to the presence of air circulation regions as shown in Figure 2, item 12 of De Jong, we observe that the air circulating region is not "directly open to the atmosphere" as air must enter an enclosure defined by the counter member 3 through holes 15. The presence of the counter member 3 restricts free access of air directly to the region about the ear penetrating member. As the presence of the counter member creating an enclosure reduces the effectiveness of air circulation the advantages associated with air circulation are correspondingly reduced.

More importantly, the counter member 3 of De Jong is located on the penetrating component rather than the complementary component. It is constructed in such a way that the limited air circulation region is provided on the outer surface of the ear rather than the inner surface.

As discussed previously, the important region to promote healing is the region of skin on the inside of the ear next to the complementary component. De Jong fails to achieve this by virtue of having the circulation region formed on the outer surface by the penetrating component. As the outer surface is less likely to suffer from slow healing and infection than the inner surface, the De Jong tag is inferior to applicant's construction.

Thus, even if one were to combine Pannier and De Jong, one would still not arrive at applicant's invention as defined by the amended claims because there is not a circulation region directly open to the atmosphere, and the limited circulation region associated with the air penetrating members is on the side of the complementary component. There is no spacer between the ear and complementary component as is required for applicant's invention.

The various combinations of references cited against Claims 12 – 22 [Claims 1 – 19 and 22 - de Jong *et al.* and Pannier; Claim 20 - Jong *et al.*, Pannier and Johnson; and Claim 21 - de Jong *et al.*, Pannier and Gessner] all include de Jong *et al.* Additionally, the other references do not supply the missing features in Claim 12 that are absent from de Jong *et al.* Therefore, the combination of references does not include “each and every” feature in Claim 12 and the claims dependent from Claim 12.

The Examiner is requested to withdraw the 35 USC § 103(a) Rejections. In light of the foregoing arguments and amendments to the claims, the Examiner is respectfully requested to allow Claims 12 - 22.

#### No Disclaimers or Disavowals

Although the present communication may include alterations to the claims, the Applicants are not conceding in this application that previously pending claims are not patentable. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

### **Conclusion**

Claims 1 - 27 are pending. Claims 12 and 22 are Currently amended. Claims 13 – 21 are Previously presented. Claims 1 – 11 and 23 - 28 are Canceled.

Applicants respectfully request the entrance of the amendments. No New Matter was entered with these amendments.

No fees are believed due; however, the Commissioner is authorized to charge any additional fees now and in the future which may be due, including any fees for additional extension of time, or credit overpayment to credit card information.

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